

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8737 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 & 2 Yes : 3 to 5 No

AHMEDABAD MUNICIPAL CORPORATION

Versus

STATE OF GUJARAT

Appearance:

MR PRANAV G DESAI for Petitioner
Mr.U.R.Bhatt,learned ASST.GOVERNMENT PLEADER
for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA and
MISS JUSTICE R.M.DOSHIT

Date of decision: 10/09/98

ORAL JUDGEMENT

1. This Special Civil Application has been filed by

the Municipal Corporation of the City of Ahmedabad against the order passed by the State of Gujarat under S.48 of the Land Acquisition Act. The Municipal Corporation wanted land for the public purpose of Housing and Neighborhood Centre and made proposal to the State Government in the year 1957 for acquisition of the land in question and the Notification under S.4 of the Act was issued by the Bombay State being Notification dated 10.8.57, which was published in the Gazette on 29.8.57 and it has been placed on record as Annexure 'A' with this Special Civil Application. It is the say of the petitioner - Municipal Corporation that notice had been given to the interested parties and after hearing the parties under S.5A, the State Government had issued Notification under S.6 of the Act on 13.2.58, which was published in the Gazette of the Government of Bombay. Thereafter Notification under S.9 of the Act was issued and on 30.4.60 the Award was published under S.11 of the Act. A Civil Suit was filed by one Salebhai Abdulhussain and Sons challenging the acquisition proceedings in Civil Suit No.3450 of 1973 in the City Civil Court of Ahmedabad with the prayer that the acquisition proceedings regarding the land being Final Plot No.55A in Town Planning Scheme No.1 which is situated near Geeta Mandir, Lati Bazar admeasuring 3003 sq.mts. be declared as null and void. The said Civil Suit No.3450 of 1973 was heard and dismissed by the City Civil Court at Ahmedabad on 30.7.76. The plaintiff had filed First Appeal No.808 of 1976 before the High Court of Gujarat and this First Appeal was also dismissed by the Gujarat High Court on 23.8.83. The matter was taken by the plaintiff before the Supreme Court through Special Leave Petition and the Supreme Court dismissed the Special Leave Petition No.582 of 1984 on 14.12.84. However, in these acquisition proceedings, which were initiated in 1957 and about which litigation, as aforesaid, had already taken place upto Supreme Court, the possession could not be taken for the period from 1973 to 1984 because of the Suit. It further appears from the pleadings that one Shri Pyare-ali Kanjibhai filed Civil Suit No.5445 of 1987 before the City Civil Court at Ahmedabad challenging the acquisition proceedings. The said Suit was dismissed by the City Civil Court at Ahmedabad on 8.8.88. The proceedings for taking the possession were then initiated on 9.5.89 and ultimately the notice under S.47A was issued to the occupier on 30.3.90.

2. There is no dispute that the plot Nos.55A, 55B, 55C and 55D had been sought to be acquired at the instance of the Municipal Corporation for the purpose of

a compact block of Housing and Neighbourhood Centre. Now so far as the possession is concerned, again there is no dispute that the possession of plot Nos.55B and 55D had been taken. The case of the respondent - State of Gujarat is that as against the integrated proposal with regard to all the four plots 55A to 55D, the Municipal Corporation itself on the basis of a Resolution had sent a letter dated 13.1.62 followed by yet another letter dated 22.5.62 that it was not interested in the acquisition of Plot No.55C (Gawle-ni Chali). So far as Plot No.55A is concerned, the petitioner Municipal Corporation has come with the case that the possession of this plot had been taken on 30.3.90 at 12.30 P.M. and in this regard reliance has been placed on a document dated 30.3.90 i.e. Annexure 'F' signed by the Executive Magistrate. But it has been explained in the affidavit-in-reply dated 28.1.92 filed by the Addl. Special Land Acquisition Officer, Ahmedabad that the possession of Plot No.55A was sought to be taken on 30.3.90 but on that very day an order of maintaining status quo was served upon the Addl. Special Land Acquisition Officer on the site itself, as had been issued by the Gujarat High Court in Special Civil Application Nos.2878 and 2886 of 1990 and, therefore, the vacant possession of the final Plot No.55A of Jamalpur T.P.Scheme-I could not be taken. It has also been mentioned in this affidavit dated 28.1.92 that since there was huge quantity of timber on the lands, the procedure of removing the said timber went on till the late evening and the remaining timber was to be removed on the next day and the vacant possession was to be taken on the next day. Keeping in view, the facts and circumstances, as aforesaid, as per the Addl. Special Land Acquisition Officer himself, who was present on the site on 30.3.90, the complete possession was to be taken on 30.3.90, but the same could not be taken. Be that as it may, the fact remains that there is no material to hold it conclusively that the possession had been taken on 30.3.90 with regard to Plot No.55A.

3. In such a fact situation, the argument raised on behalf of the Municipal Corporation that the impugned order dated 14.3.91 cancelling the acquisition under S.48(1) could not be passed by the Government because the possession had already been taken over, cannot be sustained. As per the Addl. Special Land Acquisition Officer himself, the possession had not been taken and whereas the Municipal Corporation itself had requested the Government for making Plot No.55C free from acquisition, the Government was well within its right to exercise the powers under S.48(1) and invoke the same for

the purpose of making Plot No.55A being free from acquisition. This order dated 14.3.91 was issued by the Addl. Special Land Acquisition Officer on the basis of the Revenue Department's order dated 28.2.91 passed under S.48(1), which has been duly referred in this order dated 14.3.91.

4. The learned counsel for the Municipal Corporation has placed strong reliance on 1990 (2) G.L.H. 163 (Kikabhai Ukabhai Patel v. State of Gujarat) in which the Division Bench of this Court had observed that, "If the acquisition was by the State of Gujarat of its own, it could have decided of its own to withdraw from acquisition at any time under S.48(1) before possession was taken.' But in that case the acquisition proceedings were initiated at the behest of the 3rd respondent, which had proposed the acquisition of the land for installation of its drainage disposal scheme and whereas the said proposal was accepted by the State Government and notifications under Sections 4 and 6 had been issued, if the State of Gujarat subsequently decided to withdraw from acquisition, it had to call for such proposal from the 3rd respondent via second respondent and if such proposal had been moved by the third respondent, then only a stage would have reached for the first respondent to withdraw from acquisition as required by S.48(1) of the Act. Mr.Desai has submitted on the basis of these observations, that the State Government could not have issued the impugned order making Plot No.55A to be free from acquisition without calling a fresh report or any fresh proposal from the Municipal Corporation and, therefore, the exercise of power under S.48(1) by the State of Gujarat cannot be said to be in accordance with law. True it is that it has been held by the Division Bench that in absence of a fresh proposal by the party, at whose instance and for whose benefit the acquisition proceedings are started, the State Government cannot withdraw from the acquisition. But in the facts of the present case, we find that the Municipal Corporation itself having proposed the integrated proposal to acquire Plot Nos.55A to 55D, withdrawn from the acquisition of Plot No.55C and that by itself was sufficient to defeat the basic proposal of having a compact block of Housing and Neighbourhood Centre. The Municipal Corporation itself had revised its earlier integrated proposal and, therefore, even if it is taken that the acquisition was not proposed by the State Government itself, keeping in view the fact that the Municipal Corporation itself had withdrawn from acquisition of Plot No.55C, which was a part and parcel of the acquisition proposal, the basic proposal for acquisition stood revised by the Municipal

Corporation itself and, thereafter, when the Government realised that the area in which the Plots were sought to be acquired was a sensitive area and it had created law and order problem as is revealed by the affidavit of the Addl. Special Land Acquisition Officer dated 28.1.92 wherein he has stated that the forcible possession was started to be taken and on 30.3.90 the Executive Magistrate had gone there with the police force alongwith the Police Inspector, Kagdapith Police Station and Addl. Land Acquisition Officer, Ahmedabad alongwith the Estate Officer, Ahmedabad Municipal Corporation and yet the possession could not be taken, if the Government decided to exercise its powers under S.48(1) in a matter in which the acquisition proceedings had been concluded and even the Award had been passed in the year 1960, but nothing could be done in a period of 30 years to achieve the purpose for which the land was sought to be acquired and the Government issued impugned order making Plot No.55A to be free from acquisition, it cannot be said that any exception can be taken to such an order. On query being made Mr.Desai appearing for the Municipal Corporation has submitted that on 2 plots 55B and 55D of which the possession had been taken, the Municipal Corporation has constructed E.S.I. Dispensary and certain slum quarters. That also shows that the Municipal Corporation has failed to use the land of Plot Nos.55B and 55D for the purpose for which it was sought to be acquired and thus the purpose of constructing a compact block of Housing and Neighbourhood Centre already stands defeated. It has also been given out by the learned Asst.G.P. while making reference to the averments in the affidavit-in-reply dated 28.1.92 filed by the Under Secretary, Revenue Department that in the year 1962 when the Municipal Corporation itself had requested the Government to make Plot No.55C to be free from acquisition, the State had refunded a sum of Rs.29,203.10 Ps. back to the Municipal Corporation on 19.3.68 and thus the amount which had been deposited by the Municipal Corporation initially for compensation for the land in question had been refunded way back in 1968. Thus we find that in the facts and circumstances of this case, what has been observed at page 168 by the Division Bench in the case of Kikabhai Ukabhai Patel (Supra) is of no avail to the Municipal Corporation and the view, which we have taken with reference to the exercise of power under S.48(1) by the State Government finds support from the observations made in the case of The Special Land Acquisition Officer, Bombay v. M/s. Godrej and Boyce, reported in AIR 1987 SC 2421 in which it has been categorically held that S.48 gives liberty to the State Government to withdraw from the acquisition at any stage

before possession is taken and such order of withdrawal need not be backed by reasons. Thus, the withdrawal of the acquisition by the State Government under S.48(1) has been held to be permissible.

5. This brings us to the last contention raised by Mr. Desai that the State Government could not exercise its powers under S.48(1) without notice to the Municipal Corporation. Firstly, it may be pointed out that the purpose of the acquisition for a compact block of Housing and Neighbourhood Centre had been defeated by the proposal of the Municipal Corporation itself in the facts of the present case. Secondly, S.48(1) does not contemplate any such opportunity or notice to be given to the authority at whose instance the acquisition proceedings are initiated and the Government is at liberty to withdraw from the acquisition of any land of which the possession has not been taken. There is no requirement under S.48(1) obliging the Government to give notice to the beneficiary of the acquisition before exercising such liberty. Moreover, in the case of Special Land Acquisition Officer, Bombay (Supra) the opportunity of hearing has not been held to be necessary even to the land owners before exercising the liberty under S.48(1). The right of the Municipal Corporation cannot be said to be more valuable than the right of the land owners. In any case, we are satisfied that in the facts and circumstances of this case, the Government found that there could be a likelihood of law and order problem in the sensitive area and that no prejudice has been caused to the Municipal Corporation by not giving an opportunity by the State Government before exercising the liberty under S.48(1) because Municipal Corporation itself has given up its case with regard to the acquisition in respect of Plot No.55C, which was a part and parcel of the whole object of acquisition of the four plots as integrated proposal for a compact block of Housing and Neighbourhood Centre, which has even otherwise been defeated by the Municipal Corporation itself. We do not find any force in this Special Civil Application and the same is hereby dismissed. Rule discharged. Interim relief automatically stands vacated. No order as to costs.